

## Internal Revenue Service

Number: **201528003**  
Release Date: 7/10/2015

Index Number: 9100.00-00, 9100.22-00,  
108.00-00, 108.01-00,  
108.02-01

Department of the Treasury  
Washington, DC 20224

Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:ITA:B05  
PLR-102010-15

Date:  
March 30, 2015

### Legend

Taxpayer =  
Property =  
Agreement =

Amendment =  
Bank =

Date 1 =  
Date 2 =  
Date 3 =  
Year 1 =  
Year 2 =  
Year 3 =  
\$a =  
\$b =  
\$c =  
\$d =  
Tax Preparer =

Dear :

This letter is in response to a ruling request, submitted on behalf of the Taxpayer, to extend time to make an election to treat certain discharged indebtedness as qualified

real property business indebtedness under § 301.9100-3 of the Procedure and Administration Regulations.

### FACTS

Taxpayer is an individual who owned Property through several single member LLCs. Taxpayer acquired property with proceeds from a mortgage from the Bank. In Year 1, the outstanding debt on the Property was \$a. On Date 1, Taxpayer entered into an Agreement with the Bank and paid \$b toward the outstanding mortgage balance. On Date 2, Taxpayer entered into an Amendment to the Agreement and paid another \$b toward the outstanding mortgage. On Date 3, Taxpayer paid \$c to the Bank which resulted in a discharge of indebtedness (COD) income in the amount of \$d.

In Year 1 and Year 3, Taxpayer and the taxpayer's tax preparer discussed the consequences of the receipt by Taxpayer of the COD income, and the taxpayer's tax preparer knew that Taxpayer wished to make an election to treat the indebtedness as qualified real property business indebtedness and reduce the basis of the depreciable real property. Taxpayer timely filed the federal income tax return, Form 1040, for Year 2. Taxpayer did not receive a Form 1099-C reporting the income from discharge of indebtedness for Year 2. Subsequent to the filing, the taxpayer's tax preparer discovered that he inadvertently omitted Form 982, and the Taxpayer's Form 1040 for Year 2 was filed without the required election.

### LAW AND ANALYSIS

Section 61(a) of the Code provides that gross income means all income from whatever source derived. The statute then specifically lists income from discharge of indebtedness as one of the items within the scope of the term income. See § 61(a)(12).

Section 108(a)(1)(D) provides that gross income does not include any amount that (but for § 108(a)) would be includible in gross income by reason of the discharge of indebtedness if, in the case of a taxpayer other than a C corporation, the indebtedness discharged is qualified real property business indebtedness.

Section 108(c)(2) provides, in general, that the amount excluded under § 108(a)(1)(D) with respect to any qualified real property business indebtedness shall not exceed the excess of the outstanding principal amount of such indebtedness (immediately before the discharge) over the fair market value of the real property described in § 108(c)(3)(A) (as of such time).

Section 108(c)(1) provides that the amount excluded from gross income under § 108(a)(1)(D) shall be applied to reduce the basis of the depreciable real property of the taxpayer.

Section 108(c)(3)(C) requires a taxpayer to make an election to exclude COD income under § 108(a)(1)(D).

Section 1.108-5(b) provides that the election under § 108(c)(3)(C) is made on the timely filed (including extensions) federal income tax return for the taxable year in which the taxpayer has discharge of indebtedness income that is excludible from gross income under § 108(a). The election is made on a completed Form 982, *Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment)*.

Sections 301.9100-1 through § 301.9100-3 provide the standards that the Service will use to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-3(a) provides that requests for extension of time for regulatory elections (other than automatic extensions covered in § 301.9100-2) will be granted when the taxpayer provides evidence (including affidavits) to establish that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Under § 301.9100-3(b) a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional and the tax professional failed to make, or advise the taxpayer to make, the election. However, a taxpayer is not considered to have reasonably relied on a qualified tax professional if the taxpayer knew or should have known that the professional was not competent to render advice on the regulatory election or was not aware of all relevant facts.

Section 301.9100-3(c)(1)(i) provides that the interests of the Government are prejudiced if granting relief would result in a taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made (taking into account the time value of money). Similarly, if the tax consequences of more than one taxpayer are affected by the election, the Government's interests are prejudiced if extending the time for making the election may result in the affected taxpayers, in the aggregate, having a lower tax liability than if the election had been timely made.

Section 301.9100-3(c)(1)(ii) provides that the interests of the government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made or any taxable year that would have been affected by the election had it been timely made are closed by the period of limitations on assessment under § 6501(a) before the taxpayer's receipt of a ruling granting relief under this section.

Under the facts submitted by Taxpayer, we conclude that Taxpayer has acted reasonably and in good faith under § 301.9100-3(b). In addition, we conclude that granting relief will not prejudice the interests of the government under § 301.9100-3(c).

## CONCLUSION

Based solely on the information submitted and the facts as represented in the ruling request, we grant Taxpayer an extension of 45 days from the date of this letter to file an amended return to make the election under § 108(c)(3)(C) and § 1.108-5(b). The election is to be made on Form 982. As required by § 108(c)(1) in making this election, Taxpayer will

reduce basis in its depreciable real property on its Year 2 tax return to the extent that would have been required if the election had been timely made on the original return.

Except as expressly provided in the preceding paragraph, we do not express or imply an opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, this letter does not rule on whether the amount of income at issue is properly treated as COD income under § 61(a)(12). In addition, this letter does not rule on whether the income in fact qualifies for exclusion from income under § 108.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

William A. Jackson  
Branch Chief, Branch 5  
(Income Tax & Accounting)

cc: